

XAVIER BECERRA  
Attorney General of California  
WILLIAM C. KWONG  
Supervising Deputy Attorney General  
ALLISON M. LOW  
Deputy Attorney General  
State Bar No. 273202  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
Telephone: (415) 510-3589  
Fax: (415) 703-5843  
E-mail: Allison.Low@doj.ca.gov  
*Attorneys for Defendant  
J. Clawson*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

**SHIKEB SADDOZAI,**

Plaintiff,

**v.**

**RON DAVIS, et al.,**

Defendants.

Case No. 5:18-cv-05558-BLF (PR)

**DEFENDANT'S NOTICE OF ASSISTED  
FILING AND RESPONSE**

**TO THE COURT AND PLAINTIFF SHIKEB SADDOZAI, PRO SE:**

**PLEASE TAKE NOTICE** that defense counsel received a letter from Plaintiff attached to this filing as **Exhibit A**. Plaintiff asks that defense counsel forward this letter to the Court.

It appears Plaintiff seeks to establish that he exhausted his administrative remedies for the claims he makes in his complaint. (Ex. A at 2.) Defendant, who filed a motion to dismiss on exhaustion (ECF No. 32), cannot contest Plaintiff's claim. *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (the Court accepts as true all well-pled factual allegations and construes them in the light most favorable to the plaintiff).

///

Defendant does contest, however, that Plaintiff exhausted his administrative remedies *before filing suit*. (ECF No. 32.) Plaintiff's pleadings make unequivocally clear that he exhausted his administrative remedies after his suit was filed. (ECF Nos. 1, 29.) In doing so, he failed to satisfy exhaustion requirements as mandated by the Ninth Circuit. *McKinney v. Carey*, 311 F.3d 1198, 1199 (9th Cir. 2002). The Ninth Circuit requires this action be dismissed without prejudice. *Id.* ("Congress has made a policy judgment that [the expenditure of additional resources by the parties and the court in requiring a second suit be filed] is outweighed by the advantages of requiring exhaustion prior to the filing of suit.").

Plaintiff admitted the flaw fatal to his suit in his complaints. (ECF Nos. 1, 29.) Defense counsel has provided him with all the legal authority cited in Defendant's motion to dismiss, which establishes that Plaintiff's suit cannot proceed as filed. (ECF No. 35.)

Dated: May 8, 2020

Respectfully submitted,

XAVIER BECERRA  
Attorney General of California  
WILLIAM C. KWONG  
Supervising Deputy Attorney General

*/s/ Allison M. Low*

ALLISON M. LOW  
Deputy Attorney General  
*Attorneys for Defendant*

SF2020200485  
42188272.docx

## CERTIFICATE OF SERVICE

Case Name: S. Saddozai v. Davis, et al.

Case No. 5:18-cv-05558-BLF (PR)

I hereby certify that on May 8, 2020, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

### **DEFENDANT'S NOTICE OF ASSISTED FILING AND RESPONSE with Exhibit A**

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

I further certify that some of the participants in the case are not registered CM/ECF users. On May 8, 2020, I have caused to be mailed in the Office of the Attorney General's internal mail system, the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

Shikeb Saddozai (AY1590)  
California State Prison - Corcoran  
P.O. Box 3461  
Corcoran, CA 93212  
In Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 8, 2020, at San Francisco, California.

G. Pang

Declarant

/s/ G. Pang

Signature